

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )  
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The Telephone Consumer  
Protection Act Of 1991

CC Docket No. 92-90

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Federal Communications Commission  
Office of the Secretary

COMMENTS OF SAFECARD SERVICES, INC.

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## **TABLE OF CONTENTS**

SUMMARY .....	i
INTRODUCTION AND BACKGROUND .....	1
I. COMPANY GENERATED "DO NOT CALL" LISTS ARE THE MOST EQUITABLE AND COST-EFFECTIVE MEANS OF BALANCING BUSINESS AND CONSUMER INTERESTS .....	5
II. INDUSTRY-WIDE "DO NOT CALL" LISTS ARE OVERLY BURDENSOME TO LEGITIMATE TELEMARKETING ACTIVITIES .....	10
III. THE OTHER ALTERNATIVE REGULATORY PROPOSALS ARE INFERIOR TO "DO NOT CALL" LISTS .....	10
A. National Databases Are A Costly And Unreliable Alternative To "Do Not Call" Lists .....	10
B. Network Technologies .....	12
C. Special Directory Markings .....	13
D. Time Of Day Restrictions .....	14
IV. CONCLUSION .....	15

## SUMMARY

SafeCard Services, Incorporated ("SafeCard") is a Delaware corporation organized in 1969. SafeCard sells subscriptions by mail and telephone for a class of products referred to as "continuity" services that it operates or administers. SafeCard's principle service "Hot-line" is a credit card loss notification service. Upon subscriber notification of a lost or stolen credit card, SafeCard's Hot-line service informs credit card issuers of the loss, cancels the stolen or lost card and requests issuance of a new card.

SafeCard contracts a telemarketing service to market Hot-line and its other continuity products. SafeCard's telemarketing contractor does not use artificial or prerecorded voices to market SafeCard's products. Thus, SafeCard's comments are limited to the various regulatory proposals designed to protect residential telephone subscribers' privacy rights from unwanted telephone solicitations. These include:

- 1) the establishment of a national or regional database of persons who object to receiving telephone solicitations;
- 2) network technologies that would enable called parties to block calls from certain numbers designated for telemarketers;
- 3) Company or Industry generated "do not call" lists;
- 4) special directory markings; and
- 5) time of day restrictions.

Of the five alternatives proposed, SafeCard submits that the company generated "do not call" list regulatory approach is superior to other alternatives in several important respects. Namely, an approach using "do not call" lists is superior in terms of (1) cost of

establishment and maintenance, (2) ease of enforcement, (3) cost of access to telemarketers, (4) consumer flexibility and (5) effectiveness. As discussed herein, the other alternatives identified in the Notice are inferior to "do not call" lists in one or more of the categories.

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**COMMENTS OF SAFECARD SERVICES, INC.**

Safecard Services, Inc. ("SafeCard"), by its undersigned counsel, hereby submits these comments on the Commission's Notice of Proposed Rulemaking in the above-captioned docket.<sup>1/</sup>

**INTRODUCTION AND BACKGROUND**

SafeCard Services, Incorporated ("SafeCard") is a Delaware corporation organized in 1969. SafeCard, headquartered in Ft. Lauderdale, Florida, has 350 employees located at two business locations. SafeCard sells subscriptions by mail and telephone for a class of products referred to as "continuity" services that it operates or administers. Continuity services are services provided pursuant to subscriptions which continue annually or periodically unless canceled by the subscriber. SafeCard's principal service, "Hot-Line", a credit card loss notification service, is designed to save credit card holders the time,

<sup>1/</sup> In the Matter of the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90 (released April 17, 1992).

money and needless aggravation of notifying numerous credit card companies of a credit card that has been lost or stolen. Upon subscriber notification of a lost or stolen credit card, SafeCard's Hot-Line service informs credit card issuers of the loss, cancels the stolen or lost card and requests issuance of a new card. In most states, the Hot-Line services also provides consumers with liability insurance against fraudulent use of credit cards, issuance of fraud-deterrent stickers to be affixed to credit cards, lost key return service, and emergency cash advances.

Subscriptions are sold to credit cardholders through contractual arrangements with credit card issuers, including major banks such as Citibank, Chase and Nations Bank; financial services companies such as Household Credit Services, Inc.; major oil companies such as Exxon, Texaco and Amoco; and large retail department stores such as Lord & Taylor, Sears and J.C. Penney. In 1991, approximately 50% of all subscriptions for SafeCard's Hot-Line service were acquired through telephone sales. In that same year, Hot-Line provided 72% of the company's approximately \$152 million in subscription revenue.<sup>2/</sup> SafeCard attributes its outstanding success in the business market despite a lagging economy and changes in the credit card industry to superior customer services and a commitment to providing efficient, innovative services that meet its customers' needs.

As a responsible corporate citizen dedicated to providing high quality customer service, SafeCard is sensitive to the need to protect the privacy rights of consumers from

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<sup>2/</sup> SafeCard's other continuity services include reminder reference services, a personal credit information service, a legal services plan and a discount travel service.

unwanted telephone solicitations and has carefully designed its marketing activities to minimize unwanted infringements of those rights. In particular, SafeCard contracts a telemarketing service to market Hot-Line and its other continuity products. SafeCard's telemarketing contractor does not use artificial or prerecorded voices to market SafeCard's products. Rather, SafeCard's telemarketing contractor employs "live operators" who introduce SafeCard's services to consumers by reading from a prepared script. If a consumer at any time during a call indicates that he or she does not want to speak, the live operator promptly and courteously terminates the call. Further, if a consumer indicates that he or she does not want to receive such calls in the future, SafeCard's telemarketer places that consumer's name on a "do not call" list voluntarily maintained by the telemarketer and is not called again. Since SafeCard does not use artificial or prerecorded voice telemarketing, the prohibition in the recently enacted Telephone Consumer Protection Act of 1991<sup>3/</sup> on telephone calls to residential lines using an artificial or prerecorded voice to deliver a message without the prior consent of the called party does not adversely affect SafeCard's existing business.

The TCPA directs the FCC to prescribe implementing regulations that will protect residential telephone subscribers' privacy rights from unwanted telephone solicitations. SafeCard is well-qualified to comment on the Commission's proposals as an established, responsible company that employs certain telemarketing practices in ways that have proven to provide significant benefits to American consumers without the

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<sup>3/</sup> Telephone Consumer Protection Act of 1991, Public Law 102-43 (December 20, 1991) ("TCPA").

consumer inconvenience or dissatisfaction that has sometimes been associated with telemarketing activities. In the Commission's Notice<sup>4/</sup> in this proceeding, the Commission proposes to adopt various implementing regulations as mandated by the TCPA. In particular, the Commission proposes provisions that will define and implement the TCPA's prohibition on the uses of autodialers, determine the scope of exemptions to that prohibition, and establish specific technical and procedural standards for implementing the prohibition. In accordance with the TCPA, the Commission also proposes various regulatory plans to protect residential telephone subscribers privacy rights to avoid receiving telephone solicitations to which they object.<sup>5/</sup>

As required by the TCPA, the Commission's Notice proposes five regulatory alternatives to regulate telephone solicitations to the home by telemarketers. These include:

- 1) the establishment of a national or regional database of persons who object to receiving telephone solicitations;
- 2) network technologies that would enable called parties to block calls from certain numbers designated for telemarketers;
- 3) company or industry generated "do not call" lists;
- 4) special directory markings; and
- 5) time of day restrictions.

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<sup>4/</sup> In the Matter of the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90, FCC 92-176 (released April 17, 1992) ("Notice").

<sup>5/</sup> Notice at ¶¶ 22, 33.



Of the five alternatives proposed, SafeCard submits that the industry or company "do not call" list regulatory approach is superior to other alternatives in several important respects. Namely, an approach using "do not call" lists is superior in terms of (1) cost of establishment and maintenance, (2) ease of enforcement, (3) cost of access to telemarketers, (4) consumer flexibility and (5) effectiveness. As discussed herein, the other alternatives identified in the Notice are inferior to "do not call" lists in one or more of the categories.

**I. COMPANY GENERATED "DO NOT CALL" LISTS ARE THE MOST  
EQUITABLE AND COST-EFFECTIVE MEANS OF BALANCING  
BUSINESS AND CONSUMER INTERESTS**

In the Notice, the Commission recognizes that many consumers find telemarketing calls beneficial and actually purchase the goods and services offered.<sup>6/</sup> SafeCard's own success in selling approximately 50% of the subscriptions for its Hot-Line service via telephone sales underscores the veracity of the Commission's conclusion that there is a substantial population of consumers who not only do not object to, but rely on the advantages of telemarketing sales services.

For these consumers, telemarketing services offer a convenient, reliable means to learn of and purchase new consumer products and services. In SafeCard's experience, consumers often appreciate the opportunity to discuss the features of new services and products with a sales agent in the convenience of their homes. From SafeCard's perspective, telephone sales practices offer an inexpensive, efficient means to market its

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<sup>6/</sup> See Notice at ¶ 24.

services. Indeed, SafeCard's direct telephone sales capability has been a critical element in its outstanding business success.

SafeCard appreciates the fact that there is a segment of the population that prefers not to receive telemarketing calls. Nevertheless, given the substantial number of American consumers who rely on the benefits of telemarketing services and do not object to such calls, SafeCard concurs with the Commission's tentative conclusion that "it is not in the public interest to eliminate this [marketing] option."<sup>7/</sup> Accordingly, SafeCard believes that the Commission's task in this proceeding is to carefully design a regulatory framework that appropriately balances the interests of both segments of the consumer population as well as legitimate business interests in the use of telemarketing.

Company generated "do not call" lists strike the appropriate balance between consumer privacy and business interests. As described by the Commission, "this alternative is a type of self-policing mechanism on a company or industry-wide level."<sup>8/</sup> Under this framework, companies would be required to compile and maintain "do not call" lists of consumers who affirmatively object to receiving such calls when contacted by a company.<sup>9/</sup> If the FCC receives a complaint regarding the telemarketing practices of a company, the company would be required to produce evidence of compliance with this requirement.

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<sup>7/</sup> See Notice ¶ 24.

<sup>8/</sup> See Notice at ¶ 32.

<sup>9/</sup> See Notice at 32.

SafeCard endorses this regulatory framework for several critical reasons. First, SafeCard believes that the company specific approach is the most effective and reliable means of identifying those consumers who object to telephone solicitations without unduly increasing the cost of existing telemarketing operations. Under this system once a consumer makes his or her objection to telephone solicitations known to a company, that consumer's number would be placed on the company's "do not call" list, effectively placing the company on notice that any future calls to that number would be in violation of the telephone solicitation restrictions. Thus, through its telemarketing activities, a company could develop a current, accurate and reliable list of individuals who do not want to receive telephone solicitations without disrupting legitimate telemarketing activities. This option also gives consumers the flexibility of accepting telemarketing calls from some companies and not others. For example, a consumer may opt to accept calls concerning local department store sales but request to be placed on a "do not call" list of a company that sells travel club memberships.

Second, company specific "do not call" lists are relatively inexpensive to implement and require minimal Commission involvement to maintain and enforce. As a general matter, telemarketers have no business incentive to expend the time and investment in contacting unreceptive consumers. Accordingly, many companies engaged in telemarketing activities already maintain lists of telephone subscribers who ask not to be contacted in the future. These lists are usually maintained for several years. As the Commission's Notice recognizes, a number telemarketers are in the process of establishing computer databases to maintain the "do not call" lists previously maintained

in hard copy.<sup>10/</sup> Thus, requiring telemarketers to establish and maintain such a list on a Federal level would impose virtually no additional burden on many telemarketers since this is in many respects a budding industry practice. Even for those companies or industries that do not currently maintain such lists, the cost of implementing such a practice would be minimal.

Third, the "do not call" list approach is a self-regulating mechanism that would minimize the need to dedicate substantial Commission resources to administer and enforce this regulatory framework. FCC resources would not have to be expended unless and until it receives a complaint about a particular company. Indeed, with the marketplace as a natural enforcement ally, it is highly unlikely that telemarketers in possession of a list of unreceptive consumers would knowingly call such consumers and risk incurring civil penalties for violation of the telephone solicitation restriction.

Fourth, "do not call" lists eliminate the high administrative cost associated with accessing the names of those who object to telephone solicitations from a national database or special directory markings. Since each company would compile its list from its ongoing telemarketing activities, there would be no need to periodically purchase a list from the national database or to continually stockpile local telephone directories from around the country. This benefit of "do not call" lists is particularly important to the many small companies who would be highly sensitive to increased telemarketing costs.

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<sup>10/</sup> See Notice at ¶ 32.

To complement the specific company list approach, SafeCard recommends that the Commission recognize the consumer benefits available in the telephone preference service currently maintained by the Direct Marketing Association ("DMA").<sup>11/</sup> This service -- which is free of charge to consumers -- offers consumers the opportunity to have their names deleted from national solicitation lists. DMA makes the "name deletion" list available to companies purchasing the list on a quarterly basis. Once placed on the "name deletion" list, the DMA maintains the consumer's name on the list for five years unless otherwise instructed by the consumer. At the end of five years, the consumer must renew the request to be included on the name deletion lists.

For the foregoing reasons, SafeCard believes that this self-policing mechanism is the most appropriate regulatory framework to balance the interests of consumers and businesses. Company specific "do not call" lists adequately protect the privacy interests of consumers without eliminating available means for consumers to obtain services and products and without unduly burdening business interests. Company specific "do not call" lists offer the benefits of reliable consumer information, cost-effective implementation, and administrative enforceability without any of the significant costs associated with the other proposed alternatives.

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<sup>11/</sup> The DMA is a national trade association representing over 3,000 companies and organizations that market products and services through the mail, electronic and print media and through telemarketing.

## **II. INDUSTRY-WIDE "DO NOT CALL" LISTS ARE OVERLY BURDENSOME TO LEGITIMATE TELEMARKETING ACTIVITIES.**

As proposed in the Notice, the industry-wide "do not call" lists approach would work in the same way as company generated "do not call" lists, except that the list would be compiled and maintained by the industry. SafeCard objects to this approach because it would require that each company within an industry release proprietary customer lists to its competitors. In SafeCard's business, access to potential customers is critical to its survival. Sharing such a list with competitors would be tantamount to giving away a trade secret. Moreover, SafeCard would be legally unable to share its customer list with the telemarketing industry because SafeCard does not own the list. As explained earlier, SafeCard contracts with many credit card issuers to provide its services to their customers. SafeCard's telemarketing lists consist of the customers of these credit card issuers who own the lists and consider them to be proprietary business records. In other words, SafeCard could not release its list without the prior approval of its credit card issuer customers.

## **III. THE OTHER ALTERNATIVE REGULATORY PROPOSALS ARE INFERIOR TO "DO NOT CALL" LISTS**

### **A. National Databases Are A Costly And Unreliable Alternative To "Do Not Call" Lists.**

SafeCard strongly opposes the establishment of a mandatory regional or national database as a regulatory framework for telemarketers. Unlike the "do not call" list proposal, establishment of a national or regional database requires a substantial initial

capital outlay for hardware and software and an ongoing investment for administrative overhead. Given the Commission's tentative conclusion that "any database would not be a government sponsored institution and would not receive federal funds or a federal contract for its establishment, operation or maintenance",<sup>12/</sup> and the TCPA's prohibition on charging consumers for inclusion on such a database, the entire financial burden of establishing, maintaining and distributing the database would have to be borne by telemarketers. The resulting increased costs to telemarketers would inevitably trickle down to the consumer in the form of increased prices for goods and services. Many small companies highly sensitive to the "bottom line" may be forced to cease telemarketing activities to the detriment of many consumers who do not object to such calls. Moreover, of those who continue to use telemarketing, both large and small companies would likely downsize their telemarketing activities resulting in the loss of thousands of jobs in the industry.

Furthermore, the national database proposal would pose a formidable, if not impossible, administrative task with minimal attendant benefit to consumers. The administrative task of compiling numbers for the database alone will require substantial management resources given the millions of telephone numbers likely to be involved in the initial establishment phase. Even with the necessary financial resources, it would be a difficult task to maintain a reliable database with any real degree of certainty regarding its current accuracy and completeness. The Commission's Notice correctly notes that, consumers who request inclusion in the database would continue to receive unwanted

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<sup>12/</sup> See Notice at ¶ 13.

calls from 3-6 months after their request because of the inevitable lag between the time a consumer requests to be included in the database and the time he is actually included in the database.

In light of the fact that, if adopted, a national database is likely to be severely undercapitalized, the lag time between request and actual inclusion in the database would probably be substantially longer than 3-6 months. During that period, a consumer would continue to receive telephone solicitations. A telemarketer reasonably relying on this list would risk violation of telephone solicitation restrictions punishable by civil penalties pursuant to the Communications Act. The FCC would have to expend time and money to resolve the complaints from these consumers.

SafeCard concurs with the Commission's conclusion that consumers are likely to be unsatisfied with the results that adoption of a national database would yield. Accordingly, SafeCard urges the Commission to reject the national database proposal as a viable regulatory mechanism.

**B. Network Technologies.**

As proposed, this alternative involves a system utilizing network technologies to convert telemarketers to the same telephone prefix. Under this approach, telephone subscribers could then choose to block incoming calls from that particular prefix. SafeCard concurs with the Commission's skepticism about the technical and logistical feasibility of this proposal.

In SafeCard's view, this proposal is overly burdensome and suffers from the same maladies as the national database alternative. Even if it were currently feasible to



implement switch technology on a widespread basis that could block calls from a universal telemarketing prefix, the system would be ineffective against illegitimate telemarketers and would not protect the privacy rights of individuals who object to telephone solicitations. In all probability, only legitimate telemarketers would voluntarily comply with the prefix changes that would permit a switch to identify a telemarketing call. Those illegitimate telemarketers who do not want to be regulated simply would not subscribe to the prefix and continue to make calls to consumers who have requested blocking of the telemarketing prefix. Further, this proposal imposes an additional cost on legitimate telemarketers who would undoubtedly expend the time and money to dial numbers which are blocked.

**C. Special Directory Markings.**

The special directory markings alternative is likewise inferior to the company specific "do not call" list approach. Under this alternative, special markings would be placed in every local directory listing by those residential telephone subscribers who do not wish to receive telephone solicitations. At first glance, this seems like a reasonably inexpensive proposal. Telemarketers would merely compare their lists to the directory markings or, for that matter, they could use the directory as the primary list. This regulatory approach would be adequate to regulate local companies engaged in telemarketing<sup>13/</sup> and perhaps even regional companies. However, for national telemarketers such as SafeCard, special directory markings would be a costly proposition.

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<sup>13/</sup> See Notice at ¶ 31.

National telemarketers would be required to obtain and maintain up-to-date copies of every local directory in the country. Even if these directories could be obtained without charge, the cost of shipping and storage of these directories would be substantial for national telemarketers and would result in higher consumer prices.

Further, substantial human resources would have to be devoted to manually comparing the directory listings to telemarketing lists. This time consuming process would have to be repeated with the issuance of each new directory. Further, since telemarketers would not be placed on notice until the next issue of a local directory, there would be a substantial lag between the time a consumer requests a special directory marking and telemarketers are put on notice. Thus, even the most diligent telemarketer could not reasonably rely on directory markings to avoid violating the privacy rights of consumers who object to telephone solicitations. Like the national database proposal, the special directory markings regulatory approach would be unresponsive to consumer concerns while demanding great effort on the part of telemarketers who could not rely on the framework to avoid violations of the telephone solicitation restrictions.

**D. Time of Day Restrictions.**

As proposed, under the time-of-day restriction regulatory approach, telemarketers would be proscribed from calling residential telephone subscribers during established periods of the day. Safecard strongly opposes this alternative proposal. The Commission's Notice as mandated by the TCPA clearly establishes that the purpose of this rulemaking is to "protect the residential telephone subscriber's privacy rights to avoid

receiving telephone solicitations to which they object." <sup>14/</sup> SafeCard submits that time-of-day restrictions would be wholly ineffective in protecting the privacy rights of telephone subscribers. Aside from the obvious difficulty in establishing a time-of-day restriction that appropriately reflects the lifestyles of various segments of the consumer population, such a framework would be wholly unresponsive to telephone subscribers who object to receiving any telephone solicitations regardless of the time-of-day. Consequently, companies like SafeCard, who, as a matter of good business etiquette, voluntarily comply with reasonable hours, would inevitably place calls to unresponsive consumers who object to telephone solicitations. As a result, the consumer's privacy is violated and the telemarketer places a call that would not have been made if it were on notice as to that consumer's preference via a do not call list.

In light of the obvious deficiencies of the time-of-day proposal, SafeCard urges the Commission to dispense with the adoption of any time-of-day restrictions. In SafeCard's view, adoption of any time-of-day restriction would offer little, if any, additional benefits to consumers who object to telephone solicitations.

#### **IV. CONCLUSION**

For the foregoing reasons, SafeCard urges the Commission to adopt company specific "do not call" lists as the regulatory framework for telemarketers. Of the regulatory options under consideration, "do not call" lists are the most efficient and effective means of protecting the privacy rights of consumers who do not wish to receive

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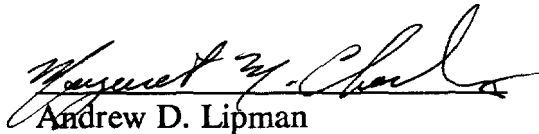
<sup>14/</sup> Notice at ¶ 22.

telephone solicitations without unnecessarily infringing upon legitimate and valuable telemarketing activities.

Respectfully submitted,

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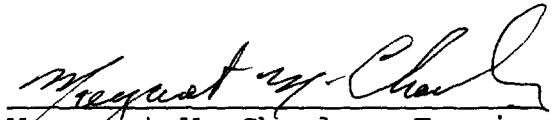
Dated: May 26, 1992

CERTIFICATE OF SERVICE

I, Margaret M. Charles, hereby certify that on this 26th day of May 1992, a copy of the Comments of SafeCard Services, Inc. have been served by courier to the following:

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